

# ARTICULABLE SUSPICION

July 2004

*Special Legislative Edition*

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## SYNOPSIS OF NEW LAWS

The State Legislature recently passed the following new laws of interest to law enforcement and local, county and state police officials. Please note the effective date on each law. No law can be enforced before its effective date. The Chapter Law refers to the chapter in which the law will be recorded in the Acts of the 2004 Legislature. The House or Senate Bill Number is how the bill originated. The RSA number is how the law will be recorded in the RSA volume or pocket supplement. Copies of the entire bill may be accessed through the [www.nh.gov](http://www.nh.gov) website, under the Legislative section, "Chaptered Final Version." Bills are listed according to the RSA affected, and are those deemed of most interest to law enforcement in general (understanding that this determination is wholly subjective). Bills passed that do not delete, change, or add specific RSAs can be found at the end of the listing.

### **(CHAPTER 82) - House Bill 1308 -- AN ACT relative to lobbying activities by state employees.**

Amends RSA 15:1 on lobbyists, to exempt state employees from the lobbyist registration law when appearing directly or indirectly to promote or oppose any legislation pending or proposed before the Legislature.

It also amends RSA 15:2-a by inserting a new paragraph II, that requires state employees appearing in their official capacity before any legislative meeting or hearing, for the purpose of promoting or opposing directly or indirectly any legislation pending or proposed before the Legislature, to wear their employee identification badges.

Effective: July 1, 2004

### **(CHAPTER 257) - Senate Bill 534 -- AN ACT relative to the reorganization of certain functions and duties of state agencies.**

Among other things, this bill removes the Office of State Planning and Energy Programs from the permitting process for public and congregate boat moorings and gives it to the Department of Safety.

It transfers, permanently, certain bio-terrorism planning positions from the Department of Health and Human Services to the Department of Safety.

It transfers authority over the New Hampshire Hospital Security Force from the Department of Health and Human Services to the Department of Safety.

It requires the Commissioner of Safety and the Commissioner of Health and Human Services to jointly report to the Legislature on a proposal to establish a Capitol Police Force.

It establishes an appeal process to the State Building Code Review Board for persons affected by final decisions of the Electrician's Board and by the State Board for the Licensing and Regulation of Plumbers.

It transfers the administration and enforcement of Bingo and Lucky 7 from the Division of State Police to the State Pari-Mutuel Commission, and changes the State Sweepstakes Commission's name to the "State Lottery Commission".

Gaming investigators and NH Hospital police officers are still prohibited from being in the Group II retirement system.

RSA 270:64, II requires the Director of Safety Services to consult with the Fish and Game Department, the Department of Environmental Services, or the Office of Energy and Planning to assist in the assessment of the impact of moorings. The Division of Safety Services under RSA 270:65 shall propose Administrative Rules to develop standards for granting special exceptions for the placement of from two (2) to four (4) moorings adjacent to a shorefront property. The placement of five (5) or more moorings adjacent to a shorefront property, shall require additional approval pursuant to RSA 270:67, I and II (Governor and Council).

RSA 21-P:4, XI gives the Commissioner of Safety discretion to grant to security officers of the NH Hospital Security Force such titles, ranks, and police powers as he deems necessary, including that of ex-officio constables including the powers of arrest for violations of the criminal and motor vehicles laws and the power to serve criminal process. The Commissioner may limit such powers as deemed necessary. These officers shall have general police powers on the State Office Campus at the NH Hospital grounds and when in hot pursuit of a person who has committed a crime on the campus or escaped from the hospital, and when acting to transport a patient to or from the hospital, the court, or another mental health facility.

RSA 21-P:7 authorizes the Commissioner of Safety to organize the hospital security force to patrol the hospital's buildings, roads and grounds of the campus of the State Office Park South and provide for the general security of the campus. The force shall be under the immediate control of, and responsible to, the Commissioner of Safety, or designee.

All officers of the hospital security force who are hired after the effective date of this act shall be required to meet the training standards required generally of police officers by the Police Standards and Training Council, and in addition, shall receive additional training in dealing with persons with mental illnesses as specified by the Commissioner of Safety after consultation with the Superintendent of the NH Hospital.

The Commissioner of DHHS shall enter into a Memorandum of Understanding with the Commissioner of Safety for the purpose of setting forth the functions, duties, and responsibilities of the Department of Safety in regard to the provision of security and dispatch services to the NH Hospital. This shall include responding to emergencies within the NH Hospital, maintaining security of the hospital buildings, insuring the safety of patients, staff and visitors, apprehending involuntarily committed persons who leave the hospital without authorization, accepting custody of involuntary admissions, transporting patients for medical, legal, and other purposes, investigating cases of abuse, neglect, sexual assault, and other criminal conduct, providing training, and conducting searches and seizures of contraband. In addition, the Department of Safety shall provide dispatch services, including monitoring hospital access between 8 p.m. and 8 a.m., operating and monitoring video security systems, receiving incoming communications, assessing the priority of calls and dispatching appropriate assistance, coordinating emergency preparedness procedures, receiving incoming fire calls and alarms, and operating the switchboard between 8 p.m. and 8 a.m. and at other times as needed. DHHS shall maintain the funding for the Hospital Security Force and pay the Department of Safety for providing these services.

RSA 135:41-43 relative to the Hospital Security Force is repealed.

The report on the Capitol Police Force shall be made to the Speaker of the House and the Senate President, with a proposal for establishing a Capitol Police Force, responsible for all state buildings in the City of Concord, with a report due by December 1, 2004.

RSA 332-G:5-6 and RSA 257:55 and 155-A:11-a govern appeals from the Electrician's Board and the Plumber's Board.

Under RSA 21-P:4, IV, the Department of Safety has the discretion to grant limited police powers to the Bingo and Lucky 7 Inspectors within the Pari-Mutuel Commission.

Effective: The sections on appeals from the Electrician's Board and Plumber's Board and the requirement for a Capitol Police Force feasibility report take effect on June 15, 2004. The sections on the transfers of the Gaming Investigators and Hospital Security Force take effect on January 1, 2005.

**(CHAPTER 106) - Senate Bill 380 -- AN ACT establishing a statewide incident command system.**

Inserts a new subdivision at RSA 21-P:52, to require the Commissioner of Safety, under Administrative Rules adopted pursuant to RSA 541-A, to establish a statewide incident command system based on the incident command system (ICS) of the national interagency incident management system. The ICS shall be used to respond to any natural or man-made cause that requires emergency management by multiple agencies or departments within state or local government. This law was passed to comply with the new federal law that prevents any city or town, or the state government, from receiving federal homeland security funds unless their first responders are trained in and using the incident command system.

Effective: July 16, 2004

**(CHAPTER 238) - House Bill 618 -- AN ACT making technical corrections to certain local property tax laws, relative to posting of municipal budgets, relative to claims for low and moderate income homeowners property tax relief, allowing the city of Manchester to issue certificates of occupancy and building permits for airport district aeronautical facilities, and authorizing Manchester Airport to tow and impound abandoned vehicles.**

This bill, in part, authorizes the Manchester Airport to tow and impound abandoned vehicles.

It inserts a Section 238:10 into the Session Laws which states "that notwithstanding the provisions of RSA 262 or any other provision of law, the Manchester Airport is authorized to tow, impound, and dispose of abandoned vehicles from parking lots, parking garages and roadways within the approved airport district. Abandoned vehicles towed and impounded shall be stored at a secure location until such time as they are claimed by an authorized person or disposed of in accordance with RSA 262:31 and RSA 262:40-c."

Effective: This portion of the Act takes effect June 15, 2004.

The Act also amends RSA 32:5, VII, regarding the posting of town budgets under the Municipal Budget Law. The Governing Body shall post certified copies of the budget within the warrant for the meeting. The Operating Budget Warrant article shall contain the amount that is recommended by the Budget Committee, if there is one.

Effective: June 15, 2004.

**(CHAPTER 232) - Senate Bill 508 -- AN ACT relative to grant-funded programs.**

This bill repeals the requirement to seek Legislative Body approval to continue grant-funded programs in a municipality. The Section it repeals is RSA 32:6-a.

Effective: June 11, 2004

**(CHAPTER 55) - Senate Bill 358 -- AN ACT relative to incompatibility of municipal offices.**

Amends RSA 37:9, incompatibility of offices, to allow a Town Manager, during the time that he/she holds such appointment, to be the manager of a district or precinct located wholly or mainly within the same town, and be elected or appointed to any municipal office in such town, district or precinct that would be subject to the Manager's supervision if occupied by another incumbent. However, he/she shall hold no other elected or appointed public office with the town except Justice of the Peace or Notary Public. Town Managers may be appointed, subject to the approval of the Selectmen, to regional or state boards, commissions, or committees, provided there is no incompatibility with the duties described in this Chapter. Also amends RSA 669:8 in a similar manner.

Effective: July 2, 2004

**(CHAPTER 219) - Senate Bill 407 -- AN ACT relative to default budgets in the budget adoption procedure in political subdivisions that have adopted official ballot voting.**

Amends RSA 40:13, IX-XI, relative to default budgets and the local government budget adoption procedure in those towns that have adopted official ballot voting. The bill provides for certain changes to the budget adoption procedure in those towns.

A default budget will mean the amount of the same appropriations as contained in the Operating Budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the Operating Budget. One-time expenditures are appropriations not likely to recur in the succeeding budget, as determined by the Governing Body, unless the provisions of RSA 40:14-b are adopted, by the local political subdivision. The default budget shall be disclosed at the first budget hearing held pursuant to RSA 32:5, or RSA 197:6. The Governing Body, unless the provisions of RSA 40:14-b are adopted, shall complete a default budget form created by the Department of Revenue Administration to determine how the default budget was calculated. The form and associated calculations must at least include appropriations contained in the previous year's operating budget, reductions and increases to the previous year's operating budget, and one-time expenditures. The Legislative Body shall not amend this amount. However, it may be adjusted by the Governing Body unless the provisions of RSA 40:14-b are adopted, acting on relevant new information at any time before the ballots are printed, provided the Governing Body, unless the provisions of RSA 40:14-b are adopted, completes an Amended Default Budget Form. The Governing Body in Official Ballot Referenda Jurisdictions operating under RSA 40:13, shall post certified copies of the Default Budget Form and any amended Default Budget Form with the proposed operating budget and the warrant.

A new section, RSA 40:14, is inserted regarding the Default Budget being determined by the Municipal Budget Committee. A local subdivision which has adopted the Official Ballot Referenda Form of meeting and has also adopted a Municipal Budget Committee pursuant to RSA 32:14, may delegate the determination of the Default Budget to the Budget Committee, instead of the Governing Body. A vote under this Section, may be taken simultaneously with the adoption of RSA 40:13 or at any time thereafter. If the vote is taken simultaneously, a special question must be placed on the warrant for the annual town meeting. If the vote is taken after the adoption of RSA 40:13, the questions shall be placed on the annual town meeting warrant by the Governing Body, or by petition, and shall not be amended. A Public Hearing on the question shall be held by the Local Governing Body and a vote to adopt the question shall conform with RSA 40:14, IV. The question shall be, "Shall we adopt the provisions of RSA 40:14-b to delegate the administration of the Default Budget to the Municipal Budget Committee?" The provisions of this Section may be rescinded following the provisions set out in RSA 40:14, IV, except that the wording of the question which shall not be amended, shall be "Shall we rescind the provisions . . . so that the Default Budget will be determined by the Governing Body instead of the Budget Committee?"

The duties of town budget committees are amended in RSA 32:16, I to include, if authorized by referendum of the voters, preparation of a Default Budget for submission at each annual Special Meeting of the voters.

Effective: August 10, 2004

**(CHAPTER 51) - Senate Bill 330 -- AN ACT relative to creditable service of retirement system members re-employed after qualifying military service.**

Amends RSA 100-A:4, IV and V, to provide for the accrual of and payment for creditable service for retirement system members who enter qualifying military service as defined in federal law, and become re-employed.

Any member of the NH Retirement System who terminated his or her employment to enter directly into the armed forces, including the reserves or the National Guard, is entitled to service credit for the period of such qualified military service, provided they become re-employed within a year after the termination of service, unless they are prevented from re-employment by virtue of a disability incurred during their service, and provided further, that they choose to make, within a period of time equal to 3 times the length of such service, but not more than 5 years, all payments to the system they would have been required to make had they been so employed during the period of such qualified military service.

Any retirement system member who terminates their employment in order to enter directly into the armed forces, or other qualified military service, and the period of service does not exceed 3 years, is entitled to a service credit for the period of such service, provided they again become employed within a year after termination of service, unless they are prevented from such re-employment by a disability incurred during the period of service.

Effective: July 2, 2004

**(CHAPTER 36) - House Bill 1426 -- AN ACT relative to testing for the human immunodeficiency virus.**

Amends RSA 141-F:6 to allow testing in a physician's office for the presence or absence of antibodies or antigens of HIV in accordance with federal law. Repeals rulemaking by DHHS relative to certification of laboratories, because federal law preempts such certification.

Effective: June 22, 2004

**(CHAPTER 193) - Senate Bill 530 -- AN ACT relative to the duties of public safety responders and the expeditious clearance of a roadway.**

Deals with the duties of public safety responders and the expeditious clearance of roadways at the scenes of traffic collisions and other disasters that affect the highway. It is the intent of the Legislature to facilitate, as rapidly as practical, the clearance of roadways during traffic collisions, natural disasters, special events, and other emergencies, to the extent that this may be accomplished without endangering emergency responders or the public, and without destroying criminal evidence. The Legislature declares that roadway clearance will be improved by the use of the principles of the National Inter-Agency Incident Command System, and by fostering coordination, cooperation, and the use of a unified command among Police Agencies, Fire Departments, Emergency Medical Response Units, the Department of Transportation, and other public and private entities that respond to such situations.

RSA 154:7-b has been inserted to provide that subject to the authority and limitations granted to Fire Officers in Charge under RSA 154:7, I (c) with respect to a propelled vehicle accident, natural disaster, or special event, occurring in or immediately adjacent to a state highway, the Fire Officer in Charge (or if the incident is not within the purview of the Fire Department, the Police Officer in Charge), all public safety responders shall coordinate their efforts to maintain incident area safety and security, including protection of responders to the incident, protection of roadway users and others at the incident site, movement of road users safely past, around and away from the incident, reduction of the likelihood of secondary crashes, and expeditious clearance of the roadway.

The Fire Chief, or in his/her absence, the Fire Engineer or Fire Officer in Charge (or if the incident is not within the purview of the Fire Department, the Police Officer in Charge), shall as early as practicable in the response, seek the assistance of law enforcement, emergency medical services, towing and recovery services, the DOT, and if applicable, the Department of Environmental Services and the Department of Health and Human Services, to effectuate the purposes of this Section. Such agencies and individuals may provide such assistance as requested.

Police officers at the scene may treat as abandoned, for the purposes of RSA 262:31 through RSA 262:40-c, any non-emergency vehicle that is obstructing traffic, and may order its immediate removal, with or without the consent of the owner or operator. Any spilled cargo or other property obstructing traffic may be treated as a "vehicle" for the purposes of RSA 262:32-37, and may be subject to immediate removal, with or without the consent of the owner.

Government agencies responding to such incident, including but not limited to law enforcement, firefighting, emergency medical services, hazardous materials teams, transportation agencies, environmental agencies and other emergency government responders and their agents exercising the incident clearance functions, shall be exempt from liability for damages resulting from such actions taken pursuant to incident clearance, including those resulting from incident detection and verification, area security and protection, rescue of persons from vehicles and hazardous environments, emergency medical transportation and care, hazardous materials response and containment, fire suppression and elimination, transportation of vehicle occupants, traffic direction and management (including the establishment and operation of alternate routes and detours), crash investigation,

dissemination of traveler information, temporary roadway repair and facilities restoration, and removal of vehicles and cargo, provided such actions are taken without willful or wanton disregard or gross negligence, and occur at the direction of the Fire or Police Officer in Charge.

Notwithstanding any other provision of law to the contrary, any agency, person or organization incurring the cost of removing vehicles or cargo, or both, at such an incident, if such removal is authorized by the Fire or Police Officer in Charge, shall have the right to compensation for the cost of such removal from the owner or owners of the vehicles.

RSA 265:37-a is inserted to provide that when in or approaching an incident involving a fire, collision, disaster, or other emergency resulting in partial or complete blockage of a highway, or a location where a Police Officer has made a traffic stop, every driver other than the driver of an emergency response vehicle shall: maintain or reduce speed; obey the directions of any authorized person directing traffic, and of all applicable emergency signals and traffic control devices; vacate as soon as possible any lane wholly or partially blocked; and give a wide berth without endangering oncoming traffic, to public safety personnel and any persons in the roadway.

RSA 265:37-b is inserted to provide that no person shall stop or park a vehicle in such manner as to impede or render dangerous the use of the roadway by others, except to avoid a collision, at the direction of an authorized official, or in the event of a mechanical breakdown. In the event of a breakdown, the hazard flashers of the vehicle shall be activated if so equipped and in working order. If a vehicle stopped on the roadway is moveable and its driver is capable of moving it, the driver shall immediately move the vehicle to the shoulder or to another safe area off of the traveled portion of the roadway. A law enforcement officer or the Incident Commander at an incident involving a fire, collision, or other emergency may order the removal, at the owner's expense, of a vehicle that is impeding emergency operations or impeding expedited restoration of traffic flow.

RSA 264:25-a is inserted to provide that notwithstanding the requirements imposed by RSA 264:25 (the Hit and Run Law), the driver of a vehicle who has been involved in an accident on the traveled portion of the roadway shall move such vehicle from the traveled portion to an un-traveled area, if it is possible to move such vehicle without risk of further damage to property or to persons.

Effective: January 1, 2005

**(CHAPTER 83) - House Bill 1309 -- AN ACT relative to noise pollution from shooting ranges.**

This bill, relative to noise pollution from shooting ranges, repeals RSA 159-B and re-enacts it to basically exempt from any state or local noise control or noise pollution ordinances any person who owns, operates, or uses a shooting range in this state, provided the owners of the range are in compliance with any applicable noise control ordinances in existence at the time the range was established, constructed, or began operations. It prevents the filing of an injunction or any civil suit against such people, and provides that a subsequent physical expansion of the shooting range, or a change in the types of firearms in use at the range, do not establish a new date of commencement of operations for the portion or portions of the range in existence prior to the expansion. No Administrative Rule, Statute, or Ordinance adopted, enacted, or proposed by the State or any County or Town can be applied retroactively to be able to limit the scope of the shooting activities previously conducted at such a shooting range, which was already in operation. No nuisance action for noise or noise pollution may be brought against such a shooting range if it was being used on a regular basis as of the date the person acquired the property, and no standard in terms of decibel level can be enacted against such a shooting range.

Effective: May 7, 2004

**(CHAPTER 247) - House Bill 1326 -- AN ACT relative to the requirements for the sale of permissible fireworks and prohibiting the retail sales of certain fireworks and establishing a study committee to examine the classification of consumer display fireworks.**

This bill amends RSA 160-C:3 and other relevant sections by changing the requirements for obtaining a state license to sell permissible fireworks, prohibiting the retail sale of firecrackers and bottle rockets, authorizing the Commissioner of Safety to make rules relative to the licensing of persons responsible for the use of flame, pyrotechnics, or special effects before an audience, changes the meeting requirements of the Permissible

Fireworks Review Committee, prohibits bonding of retail sellers of permissible fireworks, and establishes a study committee to examine the classification of consumer and display fireworks.

Any person who desires to sell permissible fireworks must apply to the town or city in which the permissible fireworks are to be sold, on a form prescribed by the Commissioner of Safety. The licensing board or the governing body may issue a local permit to sell permissible fireworks, provided the person has a permit for the sale of fireworks issued pursuant to Title 18 of the United States Code. No such permit shall be issued without the prior approval of the police chief, fire chief, and building inspector, if any, of the municipality. The municipality may charge a fee for the permit or application for a permit. After the person has obtained a permit, they may apply for a state license to sell permissible fireworks. The Commissioner of Safety, or designee, may issue a license authorizing the applicant to sell or market permissible fireworks in this state for not more than one year from the date of issue, provided the person has first obtained a local permit. The license shall be displayed at all times, openly and publicly, at the place of business. Only individuals lawfully residing in the US, or partnerships or limited liability companies organized under laws of New Hampshire or authorized to transact business within New Hampshire, or corporations organized under the laws of another state and currently registered to do business in New Hampshire, may be licensed under this chapter.

A separate license application shall be filed with respect to each place of business sought by a single licensee. The Commissioner must receive and evaluate sufficient information to determine that the business will be properly laid out and operated. Prior to the issuance of a state license, the Department of Safety may conduct a background investigation of the applicant and an inspection of the site. Buildings used for the sale of permissible fireworks shall be dedicated solely to the sale and storage of permissible fireworks and items relating to the sale and promotion of fireworks, and shall comply with the applicable requirements of the State Fire Code. If an application is denied, the applicant is entitled to a hearing.

No person under the age of 21 shall be engaged in the business of handling or selling any permissible fireworks, provided that a person at least 18 years of age may handle and sell them at a licensed sales location if under the direct supervision of a person 21 years of age or older. Any person that knowingly provides false information to the Department of Safety on an application for the sale of permissible fireworks is guilty of a misdemeanor. No licensee shall employ a person to handle or sell fireworks who has been convicted of any offense involving fireworks or explosives within the past two (2) years or who has been found to have violated any fireworks or explosives laws, rules or regulations within the past 2 years.

RSA 160-B:16-b prohibits the retail sale of firecrackers, meaning a ground device firecracker as defined by the American Pyrotechnics Association. Any person who violates this shall be guilty of a misdemeanor. RSA 160-B:16-c provides the same penalty for the retail sale of bottle rockets.

To avoid situations such as the tragedy that occurred at the nightclub fire in Rhode Island, RSA 21-P:14, IX, has been enacted to provide that the Commissioner of Safety shall adopt Administrative Rules for the licensing of persons responsible for flame, pyrotechnics, or other means of special effects for entertainment, exhibition, demonstration, or a simulation before a proximate audience as regulated by the State Fire Code adopted under RSA 153:5, and for establishing fees for such licenses.

Effective: June 15, 2004, except that the provisions on amended requirements for a state license, prohibiting the retail sale of fireworks and bottle rockets, and changing the meeting dates of the Permissible Fireworks Review Committee, shall take effect September 30, 2004.

**(CHAPTER 249) - House Bill 1378 -- AN ACT relative to tuition waivers and room and board scholarships at state educational institutions for children of certain firefighters and police officers who died while in the performance of their duties.**

The bill inserts new Sections RSA 187-A:20-a and RSA 188-F:16-a waiving tuition at state educational institutions for children of firefighters and police officers who died while in the performance of their duties. It also establishes a scholarship endowment trust fund to provide room and board scholarships to persons who qualify for this tuition waiver at state college and university systems institutions.

Effective: July 1, 2004

**(CHAPTER 191) - Senate Bill 442 -- AN ACT relative to manufactured housing installation standards.**

Establishes installation standards for manufactured housing (mobile homes) based on the Federal Manufactured Housing Act of 2000.

Inserts a new Chapter into the statutes (RSA 205-D) that provides for a Manufactured Housing Board operated under the auspices of the NH Department of Safety. This Board will license dealers, retailers, and installers of manufactured housing, and provide for inspection and dispute resolution.

Effective: July 1, 2004

**(CHAPTER 32) - House Bill 1334 -- AN ACT relative to retention of records of Fish and Game Law violations by the Fish and Game Department.**

Inserts a new section of law, RSA 206:10-a, that requires the Fish and Game Department to remove records for individuals convicted of Fish and Game Law offenses which are violation-level offenses 7 years after the final court disposition.

Effective: June 22, 2004

**(CHAPTER 53) - Senate Bill 346 -- AN ACT relative to prohibiting the operation of snowmobiles on open water.**

Amends RSA 215-A:5-b to prohibit so-called "skimming" by snowmobiles. Makes it a violation to knowingly operate a snow traveling vehicle on open water (meaning any area of an inland water body that is free of ice and snow). Does not apply to competitive events that are permitted under RSA 215-A:30.

Effective: January 1, 2005

**(CHAPTER 54) - Senate Bill 347 -- AN ACT relative to financial responsibility and conduct after an OHRV accident.**

Amends 215-A:28, I, I-a, and III. Makes all the penalties, suspensions and prohibitions of the NH financial responsibility law, and all the provisions of laws relative to the operation of a motor vehicle, apply to an OHRV while being operated on a public highway. The operator of an OHRV involved in a crash resulting in death or injury to a person or damage to property in excess of \$500, or the owner of the OHRV, if she/he has a knowledge of the collision (if the operator is incapacitated), must report the crash immediately to the nearest police officer or nearest police station, and file a written report with the Fish and Game Department and the Department of Safety (new requirement) within 5 days on a form prescribed by Fish and Game. Any OHRV operator knowingly involved in a collision which results in death, personal injury, or property damage must immediately stop at the scene of the collision, and give to the operator of the other vehicle involved in the collision, and to the person injured or the owner of the property damaged, his or her name and address, and registration number. If unable to do so, he or she must report the collision to the nearest police officer or police station.

Voluntary intoxication does not constitute a defense in the matter of knowledge under this section. If the operator does not comply with the provision, it is the duty of the owner to do so, if the vehicle is being used with the owner's permission or consent.

Violating this law in a case involving death or personal injury is a class B felony, and providing false information regarding an OHRV collision is a class B felony. If the collision involves only property damage, it is a misdemeanor.

Effective: January 1, 2005



**(CHAPTER 241) - House Bill 698 -- AN ACT relative to electronic toll collection.**

This act enables the NH Department of Transportation to adopt the "E-Z Pass" system of electronic toll collection at toll houses in New Hampshire, and establishes criteria that the Governor and Council may consider if they establish toll discounts.

It provides for videotape or other electronic monitoring of persons attempting to evade the toll collection system and sets up a procedure for revocation of licenses and registrations of people who evade the tolls, through the Bureau of Hearings at the Department of Safety.

RSA 236:31 on evasion of tolls and charges is amended to provide that it is a violation to fail, neglect, or refuse to pay the toll or charge for the use of a bridge, highway or park thereof by a motor vehicle, or to use, or attempt to use, any device or method which results in the electronic toll collection monitoring system being unable to accurately access or collect this toll or charge due or to detect the non-payment of the toll or charge. Any person violating this section shall be subject to its provisions and to an order of suspension pursuant to RSA 263:56-f.

The bill makes the owner of a vehicle using a bridge or highway subject to a toll or charge responsible for payment of the toll and charges due, plus any administrative fees the Department of Transportation accesses in accordance with its Administrative Rules, and to a license suspension under RSA 263:56-f unless the vehicle was taken without the owner's consent, or was stolen at the time of the violation, or was leased or rented to another person and the owner submits to the Department of Transportation a copy of the rental agreement or other document covering the vehicle at the time of the violation, with the name and address and owner or lessee clearly legible, at which time the renter or lessee of the vehicle shall be deemed the owner for the purposes of assessing any fine or license suspension.

Upon the evasion of an electronic toll, the Department or its designee sends by regular mail a request for payment to the owner of the vehicle within 30 days of the date of violation. The responsible person is given the opportunity to pay the required toll or charge and an administrative fee within 60 days of the date of the violation, or the Department of Transportation will file a report with the Department of Safety, seeking an order of suspension.

Any electronic toll collection monitoring equipment acquired, operated by, or used by the Department of Transportation or designee must be designed to make a record of the front or rear, or both portions of the vehicle, including any registration plates affixed to the vehicle. The equipment shall not be designed to produce a photograph, microphotograph, videotape, or other recorded image of the face of the operator or any passenger in the motor vehicle unless the projection of the image is unavoidable, because the operator or passenger is not in a passenger compartment, such as being on a motorcycle.

The Department of Transportation, and its designee, shall maintain the confidentiality of all information acquired in connection with the administration and enforcement of toll evasion, including but not limited to credit and account data, photographs or other images, and all personally identifying information obtained relative to owners of vehicles. The information shall not be a public record subject to disclosure under the Right-To-Know Law, and shall be used solely for the enforcement of this section.

RSA 259:72, defining "owner" in the motor vehicle code, now has a new paragraph V which reads "for the purposes of the provisions of this title relative to electronic toll collection (owner shall be) any person holding title to a vehicle or having an exclusive right to the use thereof under a rental or lease agreement for any period of time."

RSA 263:56-f is inserted to provide that upon receiving a report from the Commissioner of DOT or designee that the "owner" of a vehicle (as defined above) has violated the electronic toll collection term, the Director of Motor Vehicles shall notify the owner in writing, by first class mail, that his/her driving privileges, registration, resident plates, or motor vehicle registration privileges in this state may be suspended 30 days from the date of notification, unless the toll and any administrative fees are paid. The notification shall also inform the owner that he/she may request an administrative hearing before the Bureau of Hearings, prior to any suspension taking effect, provided that they request such a hearing no more than 30 days from the date the notice was issued. There will be an additional administrative fine levied by the Department of Safety, not to exceed \$250 for a first offense, \$500 for a second offense within a 12-month period, and \$1,000 for a third, or subsequent, offense within a 12-month

period. No fine shall take effect unless approved by the Commissioner of Safety, who shall have the authority to modify the amount of fine assessed. All administrative fines collected under this section shall be deposited into the Turnpike Fund. The scope of any hearing shall be limited to whether the owner has paid all tolls and administrative fees owed; whether the report from DOT correctly identified the owner of the vehicle at the time of the incident; or whether the vehicle had been reported as taken without the owner's consent or stolen, to a law enforcement agency in a timely manner. A notice of violation may be based wholly, or in part, upon the inspection of any photographic or recorded image of the vehicle. The written certification of any person employed by, or under contract with, the DOT to maintain the database shall be admissible in any hearing and shall create a rebuttable presumption that the owner is liable for the violation. The driving privileges, resident plates, and registration of any vehicle, if applicable, shall be reinstated upon notice to the Director from the DOT that all tolls, fees, and fines have been paid, and payment to the Director of Motor Vehicles of a fee of \$100 for license or driving privilege restoration and \$25 for each motor vehicle registration restored. These restoration fees shall be in lieu of any other reinstatement fees and shall be deposited in the Highway Fund.

RSA 260:14, the Motor Vehicle Privacy Act, is amended by inserting a new paragraph, III-a, stating that except for a person's photograph, computerized image, and social security number, motor vehicle records shall be made available to the DOT for the enforcement of electronic toll collection. Any records received under this section shall not be further transferred or otherwise made available to any non-governmental agency except a contracting agent of the DOT for the enforcement of electronic toll collection.

The Commissioner of the DOT must certify to the Commissioner of Safety that a toll facility has in place the equipment, procedures, and trained staff required to implement the electronic toll collection and enforcement system before violations of this act may be assessed at that facility.

Effective: June 15, 2004

**(CHAPTER 133) - House Bill 1243 -- AN ACT prohibiting the collection of biometric data.**

Amends RSA 260:10 by inserting a new section, RSA 260:10-b, prohibiting the collection of biometric data (fingerprints, thumbprints, retinal scans, iris recognition data, keystroke dynamics, hand geometry and characteristics, DNA or RNA, behavior characteristics of a handwritten signature, and facial feature pattern characteristics) in connection with motor vehicle registration or operation, or in connection with driver licensing.

Specifically provides an exception to allow the collection or retention of fingerprints for the purpose of enforcing laws relative to serious traffic offenses. This will permit police to fingerprint persons arrested for DWI, reckless driving, negligent homicide with a motor vehicle, habitual motor vehicle offender, or any motor vehicle offense for which a physical custody arrest is made, and bail is required. It also permits the taking of fingerprints for the purpose of performing criminal record checks required under federal regulations governing the issuance of hazardous material endorsements on driver's licenses. It also grandfathers the taking or use of signatures, computerized images, likenesses, or photographs in any form used by the Department of Safety prior to the effective date of this law for licensing purposes, provided that the taking or use is consistent with the provisions of RSA 260:14 (the Motor Vehicle Privacy Law).

Effective: July 18, 2004

**(CHAPTER 96) - House Bill 53 -- AN ACT relative to the sale of salvage and rebuilt vehicles and relative to abandoned vehicles.**

Amends RSA 261:22 on dismantling or destruction of a vehicle. Provides that when a vehicle has been declared a total loss and rebuilt, in addition to a salvage vehicle title, the registration must contain the legend "rebuilt vehicle" on the certificate. Before selling to any buyer any used vehicle which is required to be marked "salvaged", the title and the registration must be so marked and the dealer must disclose to the buyer in writing that the vehicle is a salvage vehicle, and the reasons for such a designation. Failure to comply constitutes an unfair or deceptive business practice under RSA 358-A:2. Any person who unwittingly purchases a salvage vehicle may rescind the purchase within 3 business days after receiving a certificate of title or registration indicating that the vehicle is a rebuilt vehicle.

RSA 263:56, I (g-h) is amended to allow the Director of Motor Vehicles to suspend or revoke the driver's license of any person determined to be the owner of an abandoned vehicle that has been removed pursuant to a request from a police officer.

Effective: January 1, 2005

**(CHAPTER 26) - House Bill 1259 -- AN ACT relative to the medical certification required for a walking disability plate or placard.**

Amends RSA 261:88 on walking disability plates and placards, to provide that a podiatrist (foot doctor) can certify that a person meets the requirements for issuance of a walking disability placard or license plate.

Effective: June 11, 2004

**(CHAPTER 250) - House Bill 1401 -- AN ACT limiting the use of traffic signal pre-emption devices, and relative to landowner permission for OHRV operation and loading and unloading OHRV's on highways.**

This bill prohibits the use of traffic signal pre-emption devices (devices that can change traffic lights from red to green) except for official use by federal, state, or local law enforcement personnel, firefighters, emergency medical services personnel, and state and municipal department of transportation or highway personnel.

It also requires persons operating OHRV's to have permission from private and public landowners and repeals an exception for loading and unloading OHRV's on highways from the prohibition on operating on highway rights-of-way.

RSA 265:15,II (a) provides that no person shall use or attempt to use any device designed or intended to change, disrupt, or interfere with the operation of a traffic signal. The Commissioner of Safety shall compile and maintain a list of devices that are prohibited under this paragraph.

A person shall be guilty of a misdemeanor if convicted under this paragraph. This paragraph does not apply to federal, state, or local law enforcement personnel while in the course of their official duties, firefighters while in the course of their official duties, emergency medical services personnel while in the course of their official duties, or state or municipal DOT or highway personnel while in the course of their official duties. The exemptions only apply to such personnel when they are operating licensed ambulances, licensed fire apparatus, or government-owned vehicles; they do not apply to the operation of private vehicles.

RSA 215-A:29, XI is amended to provide that no person shall operate an OHRV on the property of another (either public or private) unless such operator has obtained written permission from the landowner, except as otherwise provided in that section.

RSA 215-A:9, VI, relative to loading or unloading OHRV's on highways for trail access, is repealed.

Effective: January 1, 2005

**(CHAPTER 109) - House Bill 1257 -- AN ACT relative to penalties for driving under the influence with a minor in the vehicle.**

Amends RSA 215-A:11 pertaining to aggravated DWI with an OHRV, RSA 265:82-a pertaining to aggravated DWI with a motor vehicle, and RSA 270:48-A, III, pertaining to aggravated DWI with a boat, to provide that any person who operates an OHRV, a motor vehicle, or a boat while under the influence of intoxicating liquor or controlled drug and simultaneously carries a passenger under the age of 16 in or on said vehicle, is guilty of aggravated DWI. This applies to an OHRV driver who is under the influence, has a BAC of 0.08 or more, or if under the age of 21, 0.02 or more. For the operator a motor vehicle, it applies to any person who is under the influence, has a BAC of 0.08 or more, or if under the age of 21, has a BAC of 0.02 or more, or if driving a commercial motor vehicle with a commercial license, has a BAC of 0.04 or more.

Effective: January 1, 2005

**(CHAPTER 256) - Senate Bill 478 -- AN ACT relative to the penalties for DWI offenses.**

This bill modifies the penalties for certain DWI offenses.

Under RSA 265:82-b, I, any person convicted of DWI on an OHRV or DWI on a highway shall be guilty of a class B misdemeanor instead of a violation. The minimum fine increases from \$350 to \$500. A conviction requires proof of successful completion of an impaired driver intervention program, prior to the restoration of the driver's license or privilege, or completion of the Multiple DWI Offender Intervention Detention Center Program.

It also provides additional options to the sentencing court. They may sentence the person to additional alcohol and/or drug treatment and counseling, or to a treatment program approved by the Commissioner of Health and Human Services, or both; and may require the person to submit to random urinalysis or such other tests as the court may deem appropriate. The court where the person was convicted may reduce the conviction to a violation upon a motion filed by either party at least one (1) year after the date of the conviction. In making such a reduction, the court may consider the person's subsequent driving record, any evidence of drug or alcohol treatment, the hardship that having a criminal record may cause for the person, and any other factors that the court deems relevant.

Any person convicted of aggravated DWI on an OHRV or on a highway shall be guilty of a class A misdemeanor rather than a misdemeanor, and shall be fined not less than \$500 and sentenced to a mandatory sentence of not less than 10 consecutive days, of which 3 consecutive 24-hour periods shall be served in the county correctional facility, and 7 consecutive 24-hour periods at the state-operated, 7-day Multiple DWI Offender Intervention Detention Center, which sentence shall be no later than 21 days after conviction. In the event the state has no available space at the Multiple DWI Offender Intervention Detention Center, the person shall be sentenced to an equivalent 7-day residential program approved by the Commissioner of Health and Human Services. For aggravated DWI, the person's driver's license or privilege to drive shall be revoked for not less than 18 months, and at the discretion of the court, for up to two (2) years. The court may suspend up to 6 months of this sentence, provided the person is entered into the relevant driver intervention program as soon as any circumstances approved by the Department of Health and Human Services allow. The sentencing court may sentence the person to additional treatment or counseling or to a treatment program approved by DHHS or both, and require the person to submit to random urinalyses or such other tests as the court may deem appropriate. Any person who leaves the relevant driver intervention program before completion and fails to return and complete it as soon as the extenuating circumstances approved by the DH&H allows, or who fails to begin treatment within the time required, shall be in Contempt of Court and shall serve a minimum of 14 days in jail.

Any person convicted of aggravated DWI that involves a crash with personal injury shall be guilty of a class B felony, fined not less than \$1,000, and sentenced to a mandatory sentence of not less than 21 consecutive days, of which 14 consecutive 24-hour periods shall be served at the county correctional facility, followed by seven (7) consecutive 24-hour periods at the state-operated, 7-day Multiple Offender Detention Intervention Center, which sentence shall begin no later than 21 days after conviction. The person shall then begin following any treatment recommendations arising out of the final evaluation at the Intervention Detention Center or equivalent program within 60 days after completing the sentence. The court may, at the satisfactory completion of any ordered treatment, suspend any remaining deferred sentence. Failure to successfully complete the program or treatment shall result in the imposition of any remaining deferred sentence. The person's driver's license or privilege to drive shall be revoked for not less than 18 months and at the discretion of the court, for a period of up to two (2) years, except that for good cause found by the court and noted in writing, the court may suspend up to six (6) months of this sentence, provided the person is entered into the required program.

Under RSA 265:82-b, II (a)(b) for a second or subsequent offense DWI, the person shall be guilty of a class A misdemeanor and fined not less than \$500. If the complaint alleges that the prior conviction occurred within 2 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than 37 consecutive days, of which 30 consecutive 24-hour periods shall be served at the county correctional facility, followed by seven (7) consecutive 24-hour periods at the state-operated DWI Multiple Offender Intervention Detention Center within 21 days after conviction. The person shall be begin following the treatment recommendations arising out of the evaluation at the detention center or equivalent program within 60 days after they complete serving the required 30 consecutive 24-hour periods, or at such other times the court may order.

If the complaint alleges that a prior conviction occurred more than two (2) but not more than ten (10) years preceding the date of the second offense, the person shall be sentenced to not less 10 consecutive days, of which three (3) consecutive 24-hour periods shall be served in the county correctional facility and seven (7) consecutive 24-hour periods at the state-operated, 7-day DWI Multiple Offender Intervention Detention Center beginning no later than 21 days after conviction. The person shall begin following any treatment recommendations arising out of the final evaluation at the detention center or equivalent program within 60 day after they complete serving the sentence or such other time as the court may order, and the driver's license or privilege to drive shall be revoked for not less than three (3) years. The person must also pay a fee for the costs of the detention center program prior to license restoration. A person who leaves the program before completion and fails to return and complete it as soon thereafter as extenuating circumstances approved by DHHS allow, or who fails to begin following treatment recommendations within the time required, shall be in Contempt of Court and shall serve a minimum of 30 days in a county correctional facility. The sentencing Court may sentence the person to additional treatment and counseling, or to a DHHS approved treatment program or both, and may require the person to submit to random urinalysis or other such other tests as the court may deem appropriate. For a third DWI offense, any person shall be subject to all of the penalties above except that their license shall be revoked indefinitely and shall not be restored for at least 5 years. Any return of the license shall require the person to petition the court and the court may grant eligibility subject to such terms and conditions as the court may prescribe. For a third offense, the person shall be sentenced to a mandatory sentence of not less than 180 consecutive days of which 30 consecutive 24-hour periods shall be served in a county correctional facility, following which the person shall complete at their own expense a residential treatment program of at least 28 days' duration or an intensive course of substance abuse treatment based upon a formal evaluation by a licensed alcohol and other drug counselor and approved by DHHS before the license may be restored. The remainder of the sentence may be deferred for a period of up to two (2) years. The court may, at the satisfactory completion of any ordered treatment, suspend any remaining deferred sentence. Failure to successfully complete any program or recommended treatment shall result in the imposition of any remaining deferred sentence. The court may sentence a person to additional alcohol and/or drug treatment and counseling or to a treatment program approved by DHHS, or both. In addition, the court may require the person to submit to random urinalysis or such other tests as the court may deem appropriate.

Effective: January 1, 2005

**(CHAPTER 182) - House Bill 1183 -- AN ACT relative to transporting manufactured housing or modular buildings.**

Establishes the maximum height and length of manufactured homes or modular buildings that can be transported on the highways of New Hampshire. Grants the Commissioner of Transportation certain rulemaking authority relative to the transport of manufactured housing. Requires a transporter of manufactured housing to pull off the way to allow traffic to pass if traffic buildup exceeds 5 vehicles. "Manufactured housing" means mobile homes.

RSA 266:10, I and II, are amended to allow a maximum height of 14 feet 6 inches for manufactured housing units or modular buildings. Anything over 13 feet 6 inches will require a non-police escort, equipped in accordance with Administrative Rules established by the Department of Transportation.

RSA 266:11 is amended to allow the transport of manufactured housing or modular buildings up to 110 feet in length, including the transport vehicle.

RSA 266:24, III is inserted to provide that the Commissioner of Transportation shall not grant a permit for the transport of manufactured housing or modular buildings that exceeds these limits.

RSA 21-L:12-a, IV (x) is inserted, to allow the Commissioner of Transportation to set rules for non-police escort vehicles for the transport of manufactured housing or modular buildings, and to establish specific pre-approved routes for such transport, and establish criteria to determine when police escort vehicles are needed for such transport. In making this determination, the DOT Commissioner shall consider the anticipated road, traffic and weather conditions that indicate that the safety of the public will be increased, or the likelihood of damage to roadside objects will be reduced, by providing a police escort.

RSA 266:24-c is inserted to provide that the State shall not be liable for damage caused by the negligent conduct of a person transporting manufactured housing or modular buildings as authorized under this Chapter.

A new subdivision, RSA 265:159, is inserted to provide that transporters of manufactured or modular housing shall be responsible for causing the least possible inconvenience to other traffic by using every opportunity to allow following traffic to pass. If traffic build-up behind the transporting unit becomes 6 or more vehicles, the entire transporting unit shall pull off of the traveled way to allow traffic to pass. The transporter shall locate a safe place that allows the towing load to clear from the roadway so that traffic following the load can safely pass.

Effective: July 31, 2004

**(CHAPTER 56) - Senate Bill 379 -- AN ACT relative to safety inspection and certification of certain equipment on vehicles.**

Amends RSA 266:18-d, III, to provide that vehicles certified by the Department of Safety to carry 100,000 pounds off the interstate highway system need to be inspected by the Department and certified as meeting safety conditions required for the safe operation of the vehicle only once, instead of annually. The inspection shall be conducted upon the first application for certification, and no re-inspection is required unless the configuration of the vehicle (relative to power unit, axles, springs, or other safety items that could affect the vehicle's ability to qualify for an excess weight certification) is altered. However, the registered owner is required to pay the fee on an annual basis even though the truck will not be inspected annually.

Effective: July 2, 2004

**(CHAPTER 259) - House Bill 243 -- AN ACT relative to motor vehicle exhaust standards.**

This bill repeals a limitation on the modification of motor vehicle exhaust systems that said that any modified exhaust system shall be no louder than the original system (RSA 266:59, III).

The two remaining paragraphs in RSA 266:59, paragraphs I and II, that define a muffler as requiring baffles or similar devices to prevent the escape of excessive smoke or noise, remain in effect.

Effective: June 16, 2004

**(CHAPTER 245) - House Bill 1293 -- AN ACT relative to emission control equipment for certain vehicles and relative to unfair motor vehicle insurance trade practices.**

This bill modifies the exemptions from the emissions control equipment requirements for motor vehicles.

RSA 266:59-b, I, is amended to provide that every vehicle operating under the ways of the state which is subject to emissions inspection shall be equipped with all the emissions control equipment which is part of that motor vehicle's original equipment, and the equipment shall be properly connected to prevent excessive emissions. Inspections shall include a visual check for the presence and proper connection of the catalytic converter, gas cap, evaporative purge canister, PCV valve and properly configured hoses, and properly connected air injection pump/pulse air systems. The Commissioner of Safety, in consultation with the Commissioner of Environmental Services, may adopt rules to exempt vehicles from those requirements that would require a replacement of parts for which replacements cannot be reasonably obtained. The Commissioner of Safety, after consultation with the Commissioner of Environmental Services and the Air Pollution Advisory Committee, and notification of the appropriate House and Senate Committees, and with approval of the Air Pollution Advisory Committee, may modify the emission controls inspection program by substituting the exhaust gas re-circulation system for one (1) or more required items provided that the total effect of such change will produce a net environmental improvement.

The Emissions Control requirements in RSA 266:59-b, III now apply to all model year 1996 and newer gasoline powered and model year 1997 and newer diesel powered motor vehicles equipped with on-board diagnostic systems meeting federal EPA OBD-II Standards. The Commissioner of Safety, after a public hearing, can require a vehicle driven on the ways of this state subject to inspection to be tested for OBD-II indications of failures as a component of such inspection.

RSA 266:59-b, IV is amended to exempt from this section vehicles 20 or more model years old, which shall be determined by subtracting the model year of the vehicle from the calendar year in which the inspection occurs, and a new paragraph V is inserted to provide that if a vehicle fails the EPA OBD-II test and then it passes all other inspection requirements, it shall be issued a temporary waiver that permits its operation for 60 days from the date of issuance, in order to make the required repairs. The vehicle shall be eligible for only one such waiver during each inspection cycle.

Effective: The section dealing with the exemption of vehicles 20 or more model years old takes effect August 14, 2004, and the remainder of the bill takes effect July 1, 2006.

**(CHAPTER 58) - Senate Bill 424 -- AN ACT relative to boating and carnival-amusement regulation by the Department of Safety.**

This is an omnibus act relative to boating and carnival amusement regulation by the Department of Safety.

RSA 270:1-a, I is repealed and re-enacted to require the operator of a vessel who knows, or reasonably should have known, that he or she has just been involved in any accident that involves death, personal injury, or property damage, to immediately stop the vessel at the scene of the collision, render any assistance that he or she is capable of giving to the occupants of the other vessel, and give the owner or operator of the other vessel, and any person injured and the owner of any property damaged, the operator's name and the owner's name and address, the vessel registration number, and the name and address of each occupant.

If by reason of injury or absence or removal from the place of the collision or other cause, the injured person or operator of such other vessel or owner of the property damaged, or any of them, cannot understand or receive the information required in this section, it must be given to any Marine Patrol Officer or other police officer with jurisdiction arriving at the accident scene or immediately to a Marine Patrol Officer or other police officer at the nearest police station or at Marine Patrol headquarters. Any person operating a vessel in any manner involved in the accident must, within 15 days, file a written report with the Division of Safety Services if any person was injured or killed, or if damage to property is in excess of \$2,000 (the law formerly required a written report at \$1,000). If the operator is physically and mentally incapable of making such report, the owner or the owner's representative shall, after learning of the accident, forthwith make such a report. The operator or owner shall furnish to the Division such relevant information as the Division shall require.

RSA 270:1-b was repealed and re-enacted to provide that whoever fails to file the reports above, or otherwise fails to comply with the requirements relating to property, or relating to the written report to the Division, is guilty of a class A misdemeanor if a natural person, or a felony if any other person. However, if death or personal injury resulted, or a person knowing or having such reason to believe such information was false, or any of the other requirements of this section are not complied with gives information, the individual shall be guilty of a class B felony.

A new section, RSA 270:1-c, is inserted to provide that a person is guilty of a misdemeanor if they knowingly give, or cause to be given, false information to any law enforcement officer, or to the Department of Safety or its agents concerning a boating accident or alleged boating accident.

RSA 270:12-a, IV, is inserted to provide that the Commissioner of Safety, at the request of the US Coast Guard in accordance with applicable federal law, shall (to the extent of available staffing and resources) authorize Marine Patrol Officers to assist the Coast Guard in the enforcement of safety and security zones established by the Captain of the Port with jurisdiction over New Hampshire. Marine Patrol Officers so authorized may take all action necessary to assist the Coast Guard in enforcing security and safety zones to the extent authorized by the Coast Guard, including the power of arrest. The Department of Safety, prior to engaging in these activities, shall enter into a Memorandum of Agreement with the Coast Guard that establishes appropriate procedures and protocols for the enforcement activities. Any funds received from the federal government for reimbursement to the Department of Safety under this paragraph must be deposited in the Navigation Safety Fund. The Commissioner of Safety may also establish his own safety and security zone on any public or coastal waters of the state in case of an emergency requiring prompt action.

RSA 270:1-a, II-III is amended to require all law enforcement agencies having knowledge of a drowning or boating accident to report any personal injury resulting therefrom, including suspected drowning, or personal injury or death resulting from a boating accident, and all boating accidents where there is damage of \$2,000 or more, immediately, to the Division of Safety Services. It is the Division's responsibility to investigate any drowning or suspected drowning, and all boating accidents in which there is serious injury, death, or property damage of \$2,000 or more. The investigation shall be in addition to, and independent of, any investigation made by other agencies of government, except that they may exchange data and cooperate with each other to avoid unnecessary duplication of efforts. (The result of this amendment was to increase the reporting requirement from \$500 to \$2,000 to be consistent with federal law.)

Effective: June 2, 2004

**(CHAPTER 137) - House Bill 1422 -- AN ACT relative to qualifications for persons who negotiate on behalf of the state.**

Inserts a new paragraph RSA 273-A:9, III (a), which says that no person who was appointed to serve as a state negotiator or as a member of the state negotiating team, or any person who serves as a member of the employee bargaining committee, shall use his/her position to obtain anything of value for the private benefit of such person or the person's immediate family. Nothing in this section prevents an employee or taxpayer from serving on the negotiating team or bargaining committee.

Effective: July 18, 2004

**(CHAPTER 252) - Senate Bill 109 -- AN ACT adopting the Model Drug Dealer Liability Act.**

This act adopts the Model Drug Dealer Liability Act, which has been adopted by the bipartisan American Legislative Council. It inserts a new Chapter 318-C into the drug laws to provide a civil remedy for damages to persons in a community injured as a result of illegal drug use, including parents, employers, insurers, government entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to drugs in the womb. It enables them to recover damages from those persons in the community who have joined the illegal drug market. It also establishes an incentive for drug users to identify and seek payment for their own drug treatment from dealers who have sold drugs to the user in the past.

It establishes four different levels of offenses for making civil claims under this chapter, depending on the amount and type of the drug involved.

A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this chapter. A law enforcement officer or agency, the State, or a person acting at the direction of a law enforcement agency or the State (buy-bust-operations) is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence, and other elements of the cause of the action shall be shown by a preponderance of the evidence. Any person against whom financial recoveries is sought, who has a criminal conviction under the drug laws or federal drug laws, cannot deny participation in the illegal drug market. Such a conviction is also prima facie evidence of the person's participation in the illegal drug market during the 2 years preceding the date of an act that gave rise to a conviction. However, the absence of a criminal drug conviction does not bar an action against that person.

There is a two-year statute of limitations for making claims under this chapter. A prosecuting attorney may represent the State or a political subdivision of the State in any action to recover damages from a drug dealer.

Effective: January 1, 2005



**(CHAPTER 90) - House Bill 1374 -- AN ACT relative to lightning protection systems.**

Repeals and re-enacts RSA 323:2 regarding lightning protection systems. No license can be issued to a salesperson for these systems until the Commissioner of Safety has approved the material used or offered for sale by the dealer or salesperson for the purpose of protection from lightning, and the manner and system of installing such material. The approval cannot be given until the dealer has filed a bond with the Commissioner in the sum of \$5,000 to guarantee that all material used has the approval of an approved testing laboratory. The Commissioner must be satisfied that the dealer has complied with the bonding and approval requirements, and is responsible and reliable as to assets, business standing and practices, and is entitled to confidence. The dealer must have filed a written stipulation that legal process effecting the dealer or his/her agents served upon the Commissioner for the time being, shall have the same effect as if personally served upon the applicant or their agent. Any installation of lightning protection systems must be in accordance with the State Fire Code. If the installation does not meet the standards of the State Fire Code, within 90 days from completion of the job, the dealer must reimburse the owner for the cost of the installation, including labor and materials.

Effective: July 6, 2004

**(CHAPTER 107) - Senate Bill 399 -- AN ACT relative to the sale of animals.**

Amends RSA 437:1-III, and RSA 437:9, relative to the sale of animals. It provides that the laws pertaining to the sale of animals also apply to commercial kennels; increases the license fee from \$50 to \$200; and in addition to the criminal penalty, provides that any person or owner of a business engaged in selling, placing or giving away to the public, with or without a fee or donation required, live animals or birds customarily used as household pets, or who violates any of the provisions of this subdivision or a rule adopted by the Commissioner of Agriculture under it, may be subject to an administrative fine levied by the Department of Agriculture not to exceed \$1,000 for each violation. Once a license has been revoked, the Department of Agriculture may require that all animals and birds located on the premises shall be removed by the licensee within 3 working days after said revocation, and be relocated to a safe and sanitary place approved by the Department of Agriculture.

Effective: January 1, 2005

**(CHAPTER 240) - House Bill 643 -- AN ACT relative to the Division of Family Courts, the number of Superior Court Justices and Marital Masters.**

This bill makes the Family Division of the Courts, currently operating as a pilot program in Grafton and in Rockingham Counties, a permanent component of the Judicial Branch. The bill requires a Family Division Study Committee, appointed by the Superior Court, to make recommendations for the expansion of the Family Division statewide and for changes in the operation of the Family Division in Rockingham and Grafton Counties.

The bill reduces the number of Superior Court Justices from 29 to 22.

The bill also requires Marital Masters to be recommended by the Superior Court and appointed by the Governor and Council, and establishes certain qualifications and requirements for Marital Masters.

The bill amends RSA 490:33-35 on the jurisdiction of the Family Division.

Any Superior Court Justice appointed prior to July 1, 2004 may not be laid off due to the cut in the number of Justices, and shall retain his or her position until resignation, retirement, or removal pursuant to the State Constitution. As vacancies occur, vacancies shall remain unfilled until the number of Justices is reduced to 22. Any savings realized from any unfilled Superior Court Justice vacancies shall be used by the Judicial Branch for the goal of providing enhanced services to parties in cases in court involving families and children.

Effective: July 1, 2004 for Marital Masters, and July 1, 2005 for the remainder of the act.

**(CHAPTER 183) - House Bill 1228 -- AN ACT relative to changes to the uniform fine schedule.**

Amends RSA 502-A:9-b, V, to provide that the uniform fine schedule and administrative processing fee for motor vehicle and boating traffic tickets shall be developed and promulgated by the NH Supreme Court, after approval by the Legislative Fiscal Committee. After January 1, 2005, this fine schedule can only be changed by the Legislature, by statute.

Effective: January 1, 2005

**(CHAPTER 246) - House Bill 1295 -- AN ACT relative to certain court records and exempting certain documents from the Right-To-Know Law.**

This bill inserts a new subdivision beginning at RSA 507:17 on actions against governmental units. It declares that certain court records, including a lawsuit against a governmental unit, shall be available as a public record under RSA 91-A. It exempts notes or other materials made for personal use, that do not have an official purpose from the Right-To-Know Law. It exempts preliminary drafts, notes, and memoranda and other documents not in their final form, and not disclosed, circulated, or available to certain entities, from the Right-To-Know Law.

In any action against the governmental unit where the governmental unit has agreed to a settlement of such action, the complete terms of the settlement and the decree of the court judgment shall be available as a matter of public record. The court may redact the names of minor children, or any other person the court determines is entitled to privacy. Every agreement to settle a lawsuit against the governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer (town, county, city, village district, precinct, etc.) shall be kept on file in the local Clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

The records of grand and petit juries, and the records of parole and pardon boards, are exempted from the provisions of this chapter.

Any notes or materials made for personal use, that do not have an official purpose, including notes and materials made prior to, during, or after a public proceeding, and preliminary drafts, notes, and memoranda and other documents not in their final form, and not disclosed, circulated, or available to a quorum or a majority of those entities defined in RSA 91-A:1-a are exempt from disclosure.

Effective: August 14, 2004

**(CHAPTER 180) - House Bill 230 -- AN ACT establishing a committee to study how to improve the processes of the joint legislative committee on administrative rules, and making certain revisions to RSA 541-A, the Administrative Procedures Act.**

Establishes a committee to study how to improve the processes of the Joint Legislative Committee on Administrative Rules. The committee consists of five members of the Senate, and five members of the House, and they are to solicit input and consider a complete re-draft and revision of the Administrative Procedures Act and the Rules that accompany it. They are to file their report on or before November 1, 2004.

Also amends RSA 541-A:13, V (a) to amend the conditional approval process for Administrative Rules. It inserts a new section, RSA 541-A:19-a, dealing with expedited repeal of Rules. It inserts a new paragraph, RSA 541-A:40, IV, providing for a waiver by the Director of Legislative Services of any deadline contained in the Rulemaking Chapter.

Effective: June 1, 2004

**(CHAPTER 12) - House Bill 749 -- AN ACT relative to the description in a criminal complaint of the party accused.**

This amendment to RSA 592-A: 7, complaints, allows police to enter in place of a name, a description of the accused that includes an identifiable fingerprint or DNA profile. Once a complaint for this information is filed, the statute of limitations is tolled and the case can be prosecuted at any time.

Effective: June 4, 2004

**(CHAPTER 119) - Senate Bill 455 -- AN ACT removing the requirement that district courts be open on Saturdays for arraignments.**

Amends RSA 594:20-a to remove the requirement that District Courts be open on Saturdays for the purposes of arraignments. A person who was arrested and unable to raise bail must now be arraigned without unreasonable delay, but not exceeding 24 hours, Saturdays, Sundays, and holidays excepted. Notwithstanding these provisions, defendants detained under RSA 173-B (domestic violence) shall have timely access to a bail hearing by telephonic means, or otherwise as determined by the District Court.

Effective: May 17, 2004

**(CHAPTER 233) - Senate Bill 521 -- AN ACT increasing the penalty for identity fraud.**

This bill increases the penalty for identity fraud to a class A felony in all cases, by amending RSA 638:26, II.

Effective: June 11, 2004

**(CHAPTER 87) - House Bill 1361 -- AN ACT relative to sentences for certain offenses committed on or near to a public college or university campus.**

Amends RSA 644:1,1 (the riot statute) by inserting a new paragraph V. This provides additional sentencing options to courts, if the conduct comprising the offense of riot occurred within a municipality in which a student housing facility owned by a public institution of higher education is located, or any adjacent municipality. "Institute of higher education" is defined to include any public community college, public college, or public university.

The court may order the convicted defendant not to enter the campus of any public institution of higher education in this state, if the offense was a felony, for a period of time not to exceed two years following the imposition of sentence or the completion of any term of imprisonment; or if the offense is a misdemeanor, for a period of time not to exceed one year. The court may order the individual to pay restitution to the public institution of higher education and, if appropriate, to any municipality for expenses incurred as a result of the riot. The amount must be reasonable, and not exceed the individual's fair and reasonable share of the costs. No order issued under this section can prohibit a defendant from entering onto the campus of a public institution of higher education to obtain medical treatment, or from traveling on a public roadway situated on such campus for the purpose of traveling to a location other than on such campus.

Effective: May 7, 2004

**(CHAPTER 25) - House Bill 464 -- AN ACT establishing a criminal penalty for facilitating a drug or underage alcohol house party.**

Makes a person guilty of a misdemeanor if they own or have control of an occupied structure, dwelling, or curtilage, where a drug or underage house party is held. It establishes a new section, RSA 644:18, in the Criminal Code.

They must commit an overt act in furtherance of the occurrence of such a party, knowing persons under the age of 21 possess or intend to consume alcoholic beverages or use controlled drugs at the party.

A "drug or underage alcohol house party" is defined as a gathering of 5 or more people under the age of 21 at any occupied structure, dwelling, or curtilage, unrelated to the person who owns the place or has control of it, while at least one person under age 21 unlawfully possesses or consumes an alcoholic beverage or controlled drug therein.

Does not apply to the use of alcoholic beverages at legally protected religious observances or activities, (such as wakes or weddings), or to persons using a controlled drug under the care of physician where the use is consistent with the terms of a prescription. It is an affirmative defense to prosecution if a person gives timely notice to a law enforcement official of the occurrence of the party or engages in other conduct designed to prevent its occurrence, or takes action to terminate it once it is underway.

To obtain a conviction of this offense, you must prove that the person owned or had control of the place, committed an overt act in furtherance of the party, and knew that persons under the age of 21 possessed or intended to consume alcoholic beverages or use controlled drugs at the party. You would also have to prove that there were 5 or more people under the age of 21 at the gathering, who were unrelated to the owner or occupant.

If all the persons at a drug or alcohol house party at a dwelling were over the age of 21, or were related to the owner, there would be no violation.

Effective: June 15, 2004

**(CHAPTER 69) - House Bill 403 -- AN ACT requiring persons who are acquitted of certain sexual assaults by reason of insanity to register as sexual offenders.**

Amends RSA 651-B:1, III, to require a person acquitted of certain sexual assaults by reason of insanity to register as a sexual offender.

Effective: January 1, 2005

**(CHAPTER 239) - House Bill 640 -- AN ACT relative to post-conviction DNA testing.**

This bill permits a person to petition the court for DNA testing after he/she has been convicted under certain circumstances. It inserts a new Chapter 651-D into the Criminal Code for this purpose.

A person in custody pursuant to the judgment of the court may, at any time after conviction, or adjudication as a delinquent, petition the court for forensic DNA testing of any biological material. The petition must make certain representations under penalty of perjury as to why the identity of the petitioner was or should have been a significant issue during court proceedings, and why, in light of all the circumstances, the requested DNA testing is expected to exonerate the prisoner and demonstrate his or her innocence by proving that he or she has been misidentified. The petitioner must also explain why the evidence was not previously subjected to DNA testing, or how it can be subjected to re-testing with different DNA techniques that provide a reasonable probability of reliable and probative results.

The court must notify the Attorney General or the County Attorney who prosecuted the case, and give them an opportunity to respond.

The court may order DNA testing under this section upon a finding that the petitioner has established his or her claim by clear and convincing evidence. If the court grants the motion for DNA testing, the court order must designate the New Hampshire State Police Forensic Laboratory or a laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board to perform the testing, and the cost of the testing shall be paid by the petitioner, or by the State if the petitioner is indigent as determined by the court. The court may appoint counsel for an indigent petitioner under this section.

If the results of the testing are unfavorable to the petitioner, the court shall dismiss the application and if the petitioner was convicted of a sexual offense, shall forward the results to the NH State Prison Sex Offender Program.

If the results of the testing are favorable to the petitioner, the court shall order a hearing and enter any order that serves the interest of justice, including an order vacating and setting aside the sentence, discharging the prisoner if in custody, re-sentencing the prisoner, or granting a new trial.

Under RSA 651-D:3, the investigating agency, meaning the law enforcement agency that investigated a case resulting in a conviction in which biological material was collected as evidence during the course of the investigation, shall preserve any biological material obtained in connection with the investigation or prosecution for 5 years from the date of conviction or adjudication, or for as long as any person connected with that case or investigation remains in custody, whichever is longer. The investigating agency may, however, petition the court to destroy or otherwise dispose of biological material after 5 years, even if a person connected with a case is still in custody. If the investigating agency petitions the court to destroy evidence before the person is released from custody, the agency must serve a copy of the petition on the person who remains in custody, any counsel of record, and the prosecuting agency. The investigating agency may destroy the biological material 90 days after filing the petition, unless the investigating agency receives a court order preventing destruction of the evidence or a motion to preserve the evidence on the grounds that the person in custody intends to file a petition for post-conviction DNA testing within 180 days of the motion to preserve.

DNA testing and analysis under this chapter must be performed under the direction of the Division of State Police, following procedures that conform to the Federal DNA Identification Act of 1994. Identifying characteristics of the resulting DNA profile shall be stored and maintained by the Division of State Police consistent with Division policy. The Division shall prescribe procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and all DNA information obtained pursuant to this Chapter. The Division may contract with third parties for the purposes of this Chapter. Any DNA samples sent to third parties for analysis shall be coded to maintain confidentiality concerning the donor of the sample. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts stated in the analysis.

Effective: June 15, 2004

**(CHAPTER 19) - House Bill 1325 -- AN ACT relative to additional uses of the E-Z Pass system.**

Allows the Commissioner of Transportation to approve the use the E-Z Pass toll accounts for payments of other obligations incurred by E-Z Pass account holders, and to establish administrative fees for the E-Z Pass system. This will enable people who purchase the transponders for their vehicles and maintain an account with the NH DOT to charge other things besides just tolls to their E-Z Pass accounts.

Also establishes confidentiality for record information held by DOT that could serve to identify vehicles, vehicle owners, vehicle occupants or account holders in the E-Z Pass system, and provides that the information is for the exclusive use of DOT for the sole purpose of administering the electronic toll collection system and not open to any other organization or person, nor able to be used in court in any action or proceeding, unless the action or proceeding relates to evading tolls.

A privacy section effectively forecloses law enforcement from making use of this information. This would probably prevent police officers from obtaining copies of any videotapes or photographs of vehicles taken going through the tolls.

Effective: June 4, 2004

**(CHAPTER 134) - House Bill 1298 -- AN ACT establishing a committee to study local dispute resolution for public employee labor relations.**

Establishes a special committee to study dispute resolution within the context of public employee labor relations, and the feasibility of passing enabling legislation to allow towns to establish a dispute resolution process for their employees. Consists of three members of the House of Representatives and one member of the Senate. They are required to report their findings on or before November 1, 2004.

Effective: May 19, 2004

**(CHAPTER 115) - House Bill 1131 -- AN ACT establishing a committee to study exotic aquatic weeds and species.**

Establishes a study committee to study the problem of exotic aquatic weeds (milfoil) and species in the state. The committee consists of five members of the House of Representatives and one member of the Senate. They must report their findings on or before November 1, 2004.

Effective: May 17, 2004

**(CHAPTER 221) - Senate Bill 415 -- AN ACT relative to the expansion of the Grafton County Court Pilot Project relative to abuse and neglect hearings.**

This bill continues for 2 years, and expands to Rockingham County the Grafton County Court Pilot Project that opens abuse and neglect hearings to the public. The bill also continues the Legislative Oversight Committee on the pilot project, and requires the Committee to make an interim report on or before November 1, 2005, and a final report by November 1, 2006.

Effective: June 29, 2004

**(CHAPTER 236) - House Bill 369 -- AN ACT relative to the Henniker and Hillsborough District Courts and to the Hampton and Exeter District Courts**

This bill prevents the consolidation of the Henniker District Court and the Hillsborough District Court, as long as the two communities are able to obtain adequate court facilities for holding sessions in their respective communities.

The bill also prevents the consolidation of the Hampton District Court and the Exeter District Court under the same conditions.

The communities are given until June 30, 2006 to arrive at a solution to the problem of adequately housing their courts.

Effective: July 1, 2004

**(CHAPTER 242) - House Bill 713 -- AN ACT relative to the penalty for violating a zoning ordinance and relative to residences in industrial or commercial zones.**

This bill establishes a higher civil penalty for second and subsequent violations of a zoning ordinance, and provides that a prevailing municipality shall recover the costs and attorney's fees it incurred in pursuing the violation. The bill also repeals the law requiring accessing officials to file with the Register of Deeds a list of residences, located in an industrial or commercial zone, which are eligible for special appraisal.

The penalty for violating zoning ordinances remains a misdemeanor for a natural person, or a felony for any other person, and the penalty remains at \$275 for a first offense, but goes to \$550 for a subsequent offense for each day that such violation is found to continue after the conviction date, or after the date on which the violator receives written notice from a town or city that the violator is in violation, whichever is earlier.

Effective: January 1, 2005

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## JULY NEWS

### US SUPREME COURT NEWS

The United States Supreme Court recently decided the following case of interest to law enforcement.



#### **CHILD ON-LINE PROTECTION ACT ON "HOLD"**

Congress passed COPA, the Child On-line Protection Act, 47 USC 231, in order to protect minors from being exposed to pornography on the Internet. The Act prohibits any person from knowingly, and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, making any communication for commercial purposes that is available to any minor and that includes any material that the Act defines as harmful to minors. It applies only to materials distributed over the web, including web-based emails, covers only commercial purposes, and restricts only material that is harmful to minors.

Despite these safeguards against over-breadth in the statute, the American Civil Liberties Union sued the government to prevent enforcement of the law. In *Ashcroft, Attorney General v. American Civil Liberties Union*, decided May 13, 2004, the U.S. Supreme Court continued a temporary injunction against the government to prevent them from enforcing COPA, and remanded to the 3rd Circuit U.S. Court of Appeals for consideration of issues raised by the Supreme Court.

The Court said, in essence, that COPA's use of "contemporary community standards" to identify what material "is harmful to minors" did not by itself render the statute subject to being declared vague and overbroad, and thus unenforceable for First Amendment purposes. However, the Court expressed no opinion as to whether the statute suffers from over-breadth for reasons other than its use of community standards, whether the law is unconstitutionally vague, or whether it satisfies the "strict scrutiny" test. They remanded the case to the Third Circuit Court of Appeals to address these issues. Because the government did not ask to have the preliminary injunction against enforcing the law lifted, and because the Supreme Court felt it could not consider doing so on its own without resolving matters they were bucking back to the Third Circuit to consider, they refused to lift the injunction, and law enforcement is still enjoined from enforcing COPA.

Associate Justice Clarence Thomas wrote the opinion, which was concurred in by Chief Justice Rehnquist and Associate Justices Scalia, O'Connor, and Breyer, with separate opinions on one portion written by Rehnquist and joined by O'Connor and Scalia, and another separate opinion on another section written by Rehnquist and joined by O'Connor. O'Connor and Breyer filed yet another separate concurrence, Kennedy filed a concurrence, and Souter and Ginsburg concurred in the opinion but not the reasoning, with Associate Justice Steven just plain dissenting.

### NOTES FROM NOBLE DRIVE

The NH Supreme Court recently decided the following case of interest to law enforcement:

#### **DEFENDANT MAKES SUPREME COURT WORK FOR ITS PAY**

Seldom has a defendant on appeal raised more separate issues than were raised in *State v. Troy W. Zwicker*, #2003=082, decided unanimously by the Court on June 29, 2004. Zwicker appealed his convictions of possession of crack cocaine and possession of one ounce or more of marijuana with intent to sell.

Zwicker, on appeal, raised the following seven arguments:

- The search warrant was improperly issued and the evidence should be suppressed.
- The defendant's *Miranda* rights were violated and his confession should be suppressed.
- His rights against double jeopardy were violated when he was re-tried after two mistrials.
- The trial court failed to answer a jury's question during deliberations.

- The trial court should not have ordered his attorneys to provide the prosecution with a summary of the testimony he expected to get from two defense witnesses.
- The trial court should have ordered a directed verdict of innocent because the case was not proven beyond a reasonable doubt.
- His right to a speedy trial was violated.

He struck out on all counts, and his conviction was upheld on an opinion written by Associate Justice Joseph Nadeau and concurred in by the other justices.

In this case, Cpl. Richard Plourde of Berlin PD applied for a search warrant for 39 Seventh Street, Apartments 1 and 2 in Berlin and vehicles in the property/yard occupied by the defendant. In the warrant affidavit, Cpl. Plourde stated that at least five credible, confidential informants had given him information about Zwicker's drug dealing activities, and that Plourde had approached one informant to try and sell him drugs and said he only dealt in large quantities. A second informant reported significant foot traffic in and out of the place and suspected drugs were being sold there. A third informant said Zwicker had traveled to Manchester 10 different times in order to pick up five pounds of marijuana and the last time was two weeks previously, and that the informant had seen ecstasy, marijuana, and crack cocaine in the defendant's room and that he kept his drugs in his grandparents' apartment located directly over his residence. The fourth informant observed illegal drugs in the dining room. The fifth informant had seen illegal drugs in the apartment and said Zwicker dealt crack, marijuana, and ecstasy, and during the week of the warrant application, this informant participated in a controlled buy of drugs from the defendant with Cpl. Plourde, who was working undercover.

The warrant was issued and the Drug Task Force served it. Meanwhile, two detectives encountered Zwicker elsewhere in the city, told him he was the target of a drug investigation and that his apartment was being searched as they spoke, and that they were going to take him there. They also gave him his *Miranda* rights, and he acknowledged that he understood them.

Upon arrival at the residence, he was spoken to by officers. He told them he would only speak to Capt. Morency, who was present at the scene. Morency asked the officers if Zwicker had been read his rights and they affirmed that he had, and had told them he understood his rights. Zwicker affirmed that this was true. He then made several incriminating statements to the Captain, and was taken into custody.

At the hearing, Zwicker's mother testified that a few minutes after her son arrived on the scene he kept asking for a lawyer and when he was being taken away, he hugged her and asked her to please get him a lawyer. Zwicker himself testified that he told the detectives that he did not want to talk and that he wanted an attorney present if he was going to be questioned.

During the trial, the trial judge denied motions to throw out the search warrants and the incriminating statements. At the first trial, Cpl. Plourde, on direct examination, made a boo-boo when he did not wait for the court to rule on an objection and stated, as proof that the defendant owned the apartment and was responsible for the drugs being there, that he had found Zwicker's identification from the State Prison during the search. (Zwicker had done time previously.) The defense objected that this statement was prejudicial to the jury, and the court declared a mistrial "without prejudice", which meant that he could be re-tried without constituting double jeopardy. The court found the County Attorney did not orchestrate what Cpl. Plourde blurted out, and that the mistake was not deliberate on the officer's part.

A second trial was held, and this time, another police witness, Officer Nelson, inappropriately mentioned during his testimony that when he went looking for Zwicker to inform him his place was being searched, he heard the defendant was either going to Rockingham Street, or to see his probation officer. The judge immediately stopped the proceedings and declared another mistrial, without prejudice. Once again, the judge decided the officer's misconduct was not deliberate.

At his third trial, once the State rested its case, the defendant moved for a directed verdict of innocent because he claimed they had failed to prove that he had "dominion and control" over the drugs. The judge denied the motion, and the trial continued to a logical conclusion.



During deliberations, the jury asked the court whether possession of "shake" (remnants of marijuana processing such as non-saleable stems and stalks) still constituted possession with intent to distribute, or if the weight of these contents should be deducted in deciding whether Zwicker possessed an ounce of more of illegal drugs. The court did not directly answer their question, but instead told them that the non-saleable items did count.

The Supreme Court decided the search warrant was properly issued and that probable cause existed and the information the warrant was based upon was not stale. Probable cause to search exists if a person of ordinary caution would justifiably believe that what is sought will be found through the search, and will aid in a particular apprehension or conviction. To establish this, the officer need only present the judge with sufficient facts and circumstances to establish a reasonable likelihood that the evidence or contraband sought will be presently found in the place to be searched. A totality of the circumstances test is to be used in making this determination, in which the veracity and basis of knowledge of the informant is considered, in addition to other indicia of reliability, such as corroboration by the police. Warrant affidavits are not interpreted in a hyper-technical sense, but realistically and with common sense. The warrant passed this test. There was information from five individuals, most of the information occurred within the weeks preceding the warrant, two of the informants had given reliable information in the past, and a controlled buy was conducted within one week of the warrant application.

As to whether or not Zwicker asked for a lawyer and said he did not want to talk to the police, it was up to the State to prove beyond a reasonable doubt that the defendant was warned of his rights, and that his statements were made knowingly, voluntarily, and intelligently, and were the product of an essentially unconstrained choice and not extracted by threats, violence, direct or implied promises of any sort, or by exertion of any improper influence. This is evaluated according to the totality of the circumstances. Here, the defendant conceded that he was read his rights before being placed in the cruiser. He does say that he told the officers he had nothing to say and wanted a lawyer. However, the officers testified otherwise, and the trial court chose to believe them instead of the defendant, citing inconsistencies in his testimony and that of others. They discounted his mother's testimony because she was not present when he spoke with the police. The trial court heard and observed all the witnesses and was in the best position to decide who was telling the truth, and his decision would not be disturbed unless it was totally unreasonable or unsupported by the evidence.

Double jeopardy did not prevent him from being tried three times, because the two mistrials were not because of deliberate misconduct by the prosecution that rose to the level of gross negligence or intentional misconduct that caused aggravated circumstances to develop that severely prejudiced the defendant. This was a matter of fact to be decided by the trial court.

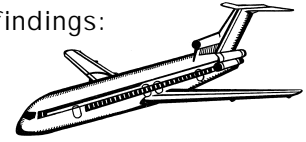
Despite not completely answering the jury's question when he gave the one-word answer, "yes", the judge had completely explained the law during his charge to the jury. He might have better clarified the issue for them by giving a longer answer to their question, but his answer did not constitute an unsustainable exercise of discretion. He told them during his jury charge that to find the defendant guilty, they must find that he had the drug under his custody and control, that he knew the drug was there, that he knew that it was marijuana, that it was in fact marijuana, and that he possessed it with intent to sell or distribute it to other persons. To decide whether he intended to distribute it, the jury was told it must consider the quantity of drugs found, other evidence along with the drugs, or any other evidence they may consider relevant. The State did not have to prove that he intended to make a profit, only that he intended to give or distribute the drugs to another person by any means, or an intent to transfer it by sale, gift, or any means, whether for profit or not.

The court did not err in ordering defense counsel to give the prosecutor a summary of what they expected two defense witnesses to testify to. This was not protected "work product" because it was merely a summary of what they were expected to say, and did not reveal any defense strategy of the defense's evaluation of the credibility of what these witnesses would say. It contained purely factual information.

The defendant did not raise the issue of a speedy trial by making a contemporaneous objection at his trial. Therefore, the issue was not preserved for appeal and the Supreme Court refused to consider it.

Guilty as charged.

Flying High- Ever wonder who's flying the friendly skies? Consider these findings:



- According to the Air Transport Association, Americans take more than 611 million domestic flights every year.
- The Bureau of Transportation Statistics says most Americans will opt to fly rather than drive if the distance is 500 miles or more. Seven percent of long distance trips (defined as 50 miles or more) are by air.
- A survey by Boeing found that one in three Americans is afraid to fly.
- Seminars on Aero Anxiety Relief (SOAR), a firm that helps people overcome their fear of flying, estimates that more than 12 million are so afraid of flying that they have never flown.
- International Research Associates says that the fear of flying is more than twice as prevalent among women (21 percent) than men (9 percent).

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#### DRUG-IMPAIRED DRIVING REMAINS A PROBLEM

Several years ago, the NH Public Health Laboratory conducted a test in which they examined blood samples of DWI suspects to try and determine how many persons arrested for DWI also had other drugs in their systems. The answer was a startling 25 percent! This problem is known as "poly drug use", and strongly indicates that people who are addicted to alcohol are often also addicted to other drugs.

The best tool for determining whether a person is under the influence of a legal or illegal drug, and which drug they have consumed, is the DRE - the Drug Recognition Expert. There are several dozen DRE's in New Hampshire, and they work for both State Police and a number of local police departments. Lt. Jeff Mullaney, of the PSTC staff, is a certified DRE and DRE Instructor, and manages the DRE training program for New Hampshire.

The DRE program has been successfully implemented in 30 states and many countries worldwide since its inception in the early 1990's by the Los Angeles Police Department. It is based on scientific experiments conducted by medical and drug experts. The DRE program trains officers to recognize behaviors and physiological states associated with psychoactive drugs by evaluating the performance of subjects during a series of standardized tests. Although the program was initially developed to snare drugged drivers, a DRE is often called to the scene to detect drug usage in the schools and in the workplace, and even to administer tests to persons about to be questioned in order to ensure they are capable of waiving their rights and speaking to detectives.

Initially, someone looks at a subject and feels their behavior is outside the norm. If their breath alcohol content is inconsistent with their observed level of impairment, a DRE is called to administer additional tests to outline and document the subject's impairment. The last step is a blood sample in order for toxicology to confirm the DRE's findings. Why not a blood sample and not a DRE? Simply because there are so many impairing substances today, a blood test is "hit or miss" unless the toxicologist knows what to test for. The DRE's examination tells the lab what to look for. Lab tests show that a skilled DRE accurately assesses drug impairment 90% of the time or more.

The DRE exam is a 12-step process in which the DRE forms an opinion as to whether the suspect is impaired, if the impairment is due to drugs, and which drug category or combination of categories is involved.

An abbreviated "Drugs that Impair" training program is also available, and is often presented to school officials, probation officers, and to police officers who need more information about drugs but do not wish to become a full-fledged DRE.

For more information on how to become a DRE or how to enter one or more of your officers in the program, contact Lt. Mullaney.

#### NEW HAMPSHIRE'S POPULATION IS SHIFTING

Housing shortages, lack of affordable house lots, and high rents in the state's southern tier are leading to population shifts, with more growth now occurring in the northern and western counties, according to recent U.S. and State Census figures.

Berlin, Nashua, and Portsmouth lost population last year, with Berlin logging at 0.6% less than the previous year and declining to 10,100 residents. Nashua lost 0.36% and cut back to 87,285, and Portsmouth lost 0.12% and dropped to 21,000.

Other key towns near the Massachusetts border with declines were Merrimack at 0.09% and Derry at 0.08%.

However, Manchester grew by 0.55% and remains the most populous city in the state. It now has 108,871 residents. Windham gained 3.38%, and Pelham's population grew by 2.81%, Hudson's by 1.66%, and Salem's by 0.57% last year. Statewide, the population gained 1.04%. The towns with the highest individual gains were Springfield (5.07%), East Kingston, Bow, and Barnstead (4.25%). Chester went from 3,792 in 2000 to 4,491 last year. Bedford has sprung from 3,636 residents in 1960 to 18,274 last year.

Of the state's 10 counties, Belknap grew the most, with a 2% increase. Coos grew the least, at 0.01%. No county's population declined last year.

Since 1960, New Hampshire's population has increased by more than 629,000, and is currently pegged at 1,235,786. We are projected to add up to 75,000 more residents every five years, or about 15,000 a year, and to have 1.58 million people by 2025. Although more new NH residents come from Massachusetts than elsewhere, the difference is not as dramatic as in the past. Now, newly-minted Granite Staters come from Maine, New York, Vermont and Connecticut in large numbers, too.

#### NH'S SEAT BELT USE REMAINS LOW

New Hampshire is 47th from the lowest of the 50 states in seat belt use, according to federal estimates. Only half (50%) of Granite Staters buckle up. This dismal record is topped only by the fact that Maine, Minnesota and Wyoming did not file reports last year. New Hampshire is alone among U.S. states and territories, and Canadian provinces, without a mandatory seat belt law for adults.

Washington State has the highest number of persons buckling up - 93%, with California a close second at 91%. Next to New Hampshire, the lowest are Massachusetts, 51%, Mississippi, 61%, and Kentucky, 62%. In Connecticut, 78% buckle up, while 85% of Vermonters and 71% of Rhode Islanders have seen the light. The feds estimate the death toll on the highways would be cut in half if everyone used seat belts.

#### **IN MEMORIAM, DOUGLAS J. SCRUTON**

***Chief Douglas Scruton, of New Durham PD, died unexpectedly on July 25 at the age of 56. He had served in the U.S. Marine Corps and was honorably discharged as a Sergeant. He worked for the Strafford County Sheriff's Dept., Farmington PD, and New Durham PD, becoming Chief in 1998. Our condolences to his wife, Robin, and other family members, and to the staff of New Durham PD.***

#### **IN MEMORIAM, JAMES F. BURNS, JR.**

***James F. Burns, Jr., a former Manchester police officer, died recently at the age of 77, in a local nursing home. Following his police career, he worked for the NH Department of Employment Security and for the U.S. Treasury Department in Washington, DC. Our condolences to his son and other family members.***

#### RETIREMENTS

Chief Thomas Iverson retired from Litchfield PD.

Lt. Donald McCrady retired after 24 years of service to the Town of Hudson;  
he will continue to serve as a Special Officer.

Lt. George Pangakis retired from Concord PD; he is now Director of Security at St. Paul's School.

Lt. Wayne Fortier, Sgt. Bruce Mathews, and TFC J. Michael Johnson retired from the NH State Police.

Sgt. Samuel Daisey retired from Gorham PD.

Officer Raymond Clooney retired from Keene PD.

## PROMOTIONS/ TRANSFERS

Stephen Curry, former Commanding General of the U.S. Army Military Police School,  
now Commissioner of the NH Dept. of Corrections  
Chief Jeff Jaran, formerly of Sandwich PD, now Chief of Bow PD  
Sgt. Ernest Thompson, formerly of Waterville Valley PD, now Chief of Bridgewater PD  
Capt. Paul Cyr, Gorham PD, now also PT Chief of Errol PD  
Deputy Chief David Currier, Seabrook PD, to Chief  
Sgt. Randy Sobel, Middleton PD, to Chief  
Master Patrol Officer Joseph O'Brion, Litchfield PD, to Chief  
Major Barry Hunter, NH State Police, to Executive Major  
Capt. Craig Wiggin, NH State Police, to Major  
Lt. Allen Welch, NH State Police, to Captain  
Lt. David Kelley, NH State Police, to Captain  
Lt. Susan Forey, NH State Police, to Captain  
Sgt. Robert Tousignant, Hudson PD, to Lieutenant  
School Resource Officer Douglas Dubuque, Hudson PD - transfer to the Detective Bureau  
Master Patrol Officer William Emmons, Hudson PD - transfer to School Resource Officer  
Cpl. Robert Parent, NH Dept. of Corrections, to Sergeant  
Cpl. Luca Susca, NH Dept. of Corrections, to Sergeant  
C.O. Jessica Riendeau, NH Dept. of Corrections, to Corporal

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## Tour de France, July 3-25

The Tour de France, a nearly month-long bicycle race that runs through France, dates back to 1903, when it began as a publicity stunt for the publication L'Auto. The first race attracted 60 riders and covered 2,500 kilometers (1,500 miles) over 19 days. The competition was so fierce that the following year some cyclists sneaked onto trains and cars or dropped spikes in front of opponents' wheels. There was some talk of canceling future races, but officials opted to lengthen the race and adopt tighter rules to ensure credibility.



War World I halted the race. On its resumption, the yellow jersey, or "maillot jaune," was introduced as the award to the leading bicyclist. Since then, other jerseys have been added. A green jersey goes to the most consistent rider; a polka dot jersey is for the rider who does best on mountains, and a white jersey is given to the best rider under 25. The race was again halted for War World II. Thus far, there have been 90 races (including 2004). Now, the three-week event attracts 200 riders and covers between 3,500 and 4,000 kilometers (2,100 to 2,400 miles), depending on the course, which is changed every year. Each cyclist is a member of one of 21 nine-man teams.

American Lance Armstrong won his sixth consecutive victory this year. He had been tied with Spaniard Miguel Indurain for the record of five consecutive victories. Last year, he won by 61 seconds and broke his own speed record with an average of 25.38 miles per hour, the fastest in Tour history.

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## LINCOLN PD WINS AWARD

On June 22, 2004, the Lincoln Police Dept. received the Trojanowisc Award from the New England Community Policing Symposium, based on its commitment to the community and its tourist-oriented policing program. The award classification was for communities under 15,000 residents. The award was named after Professor Robert Trojanowicz of Michigan State University, known in many circles as the "Father of Community Policing." According to Trojanowicz, "Community policing is a philosophy of full service personalized policing, when the same officer patrols and works in the same area on a permanent basis, from a decentralized place, working in a proactive partnership with citizens to identify and solve problems."

Agencies in all the New England states are eligible for the award. Lincoln Chief Theodore Smith, Lt. Alfred Burbank, and Officer Howard Beaudry received the award at the annual symposium. Chief Smith also presented a class on developing a tourist-oriented police agency.



## FROM THE K-9 CORNER

By: Lt. Joseph Collins, Law Enforcement Training Specialist

Thanks to the cooperative effort between the NH Municipal Association, the Working Dog Foundation, and NH Police Standards & Training, the recent two-day training seminar on "Instituting and Managing a K-9 Unit" was a huge success. Over 50 administrators and officers from as far away as Canada attended the training. The primary instructor was Deputy Terry Fleck from Lake Tahoe, CA.

Deputy Fleck is a 26-year law enforcement veteran, and has been a K-9 handler and trainer for over 21 years. He is an expert in the field of canine legalities.

Participants of the training received extensive training on K-9 legal updates and K-9 program management issues. Based on the feedback received, we look forward to providing this seminar again, as well as additional K-9 related training, to our NH law enforcement family. If officers or departments have specific K-9 related topics that they believe would be viable additions to our training catalog, or that they would like to learn more about, please feel free to contact me at [jcollins@pstc.state.nh.us](mailto:jcollins@pstc.state.nh.us).

## NH K-9 ACADEMY OPEN HOUSE

The NH Police K-9 Academy, located at Pease Air National Guard Base in Portsmouth, will be hosting an open house and police dog demonstration on Saturday, August 28, 2004, starting at 2:00 p.m. This event will be held rain or shine, and will give visitors an opportunity to meet many of the dogs that train at the K-9 Academy, and to see what they can do through various skits and demonstrations. For more information, visit their website at [www.workingdog.org](http://www.workingdog.org).

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**Naming Hurricanes** -- For hundreds of years, hurricanes in the West Indies were named after the saint's day on which they occurred. In the late 19th century, an Australian meteorologist, Clement Wragge, began giving women's names to tropical storms, deeming them appropriate for these unpredictable and dangerous occurrences. The U.S. National Weather Service, which tracks hurricanes and issues warnings and watches, began using female names for storms in 1953. By the late 1970s, as the growing number of women meteorologists raised the consciousness of the field, NWS began to alternate women's and men's names.

Hurricanes are named in alphabetical order, omitting Q, U, and Z. Storms in the Atlantic may be named in English, French, or Spanish. The World Meteorological Association uses six lists of names in rotation, repeating each list every six years. However, sometimes a hurricane is so deadly or costly that its name is retired (such as Hurricane Andrew, retired in 1992; Hugo, 1989; Mitch, 1998; and Lili in 2002).

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## OPERATION SIDE-DOOR

By: Chief Aidan Moore, NH Bureau of Liquor Enforcement

Fake identification was once viewed as a simple means for underage drinkers or smokers to obtain age restricted products. We now see fake identification use in terrorism, identity theft, insurance fraud, illegal employment and citizenship.

**New Hampshire Law states: The possession of a photographic identification card that purports to be an official document issued by a local, state, or federal government, or any political subdivision thereof, which contains false or inaccurate information regarding the name, address, date of birth, or height and weight characteristics of the card holder is prohibited.**

To counter the manufacturing and possession of fake identification, the New Hampshire Bureau of Liquor Enforcement has developed "**Operation Side-Door**". Operation Side-Door is designed to be a joint venture involving local, state, and federal law enforcement, as well as alcohol licensees.

Officers participating in Operation Side-Door will receive four hours of training in detecting fictitious documents. After receiving the training, those officers will be partnered with Bureau Investigators with an expertise in detecting fake ID's. The team will be stationed at on-premise drinking establishments. The doorman of the on-premise establishment will check the identification of each patron. The identification will be re-checked by the Side-Door team. Individuals found to be in possession of fictitious or altered identification shall be arrested and charged with a Class B Misdemeanor.

Operation Side Door will generate intelligence that may help identify, and hold accountable, those who are endangering the lives of the New Hampshire's youth and threatening the safety and financial security of the nation.

By working together at the local, state and federal level, we can produce a winning solution to a serious problem. One or more drinking establishments in your community may have been selected for this operation. If you are interest in participating in Operation Side-Door, please contact Lieutenant Eddie Edwards at 271-3521.

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Cooling Down a Hot Car -- Auto accessory company Axius determined that on a 95 degree Fahrenheit day, trapped hot air inside your car can make the dashboard hot enough to fry bacon and eggs! The steering wheel can reach 159 degrees, and the seat, 162 degrees. To keep your car as cool as possible, try these tips:

- Park in the shade whenever possible.
- Cover your steering wheel with a towel when you park.
- When you get into a hot car, open windows and the sunroof to let out the hot air. Turn on the air conditioning, and select "recirculate" for faster cool-down.
- Use sunshades, which Axius says can reduce heat buildup by more than 48 degrees F.
- Consider getting your windows tinted. (Check with local law enforcement for rules on how dark the tinting film can be and which windows can be tinted.)
- For your next car, consider buying a light-color vehicle with a light interior.



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#### CLASS AT ROGER WILLIAMS UNIVERSITY

The following class will be held at the Roger Williams University Baypoint Inn & Conference Center, 144 Anthony Road, Portsmouth, RI:

A ten-day program, "Command Training - Executive Management Course" will be offered Monday through Friday from August 16 to August 27, 2004. The course is appropriate for people holding the rank of Captain and above. Attendees will examine topics including Leadership & Management Principles, Planning and Data Analysis, Labor Law, Community Relations, etc. The cost is \$900, which includes materials, breaks, and lunches.

To register for these classes, or for more information, Contact Denise Owens at (401) 254-3320, or Liz Campo at (401) 254-3731.

#### CONWAY PD ACCEPTING APPLICATIONS

The Conway Police Dept. is seeking applications for a full-time police officer. Interested candidates must be able to successfully complete a written test, physical agility test, oral board, polygraph, and psychological exam, as well as a background investigation. Pay commensurate with experience, \$35,277+. Resumes are to be submitted to Conway Police Department., PO Box 538, Center Conway NH 03813. For more info about the department, see [www.conwaypd.com](http://www.conwaypd.com).

## JOB OPENING IN LITCHFIELD

The Litchfield Police Dept. is accepting applications for a full-time police officer position. Candidates must pass a written test, physical agility test, oral interview, psychological, polygraph, medical exam, and an extensive background investigation. Certified officers are preferred. Salary range is \$34,465.60 - \$49,233.60. Applications may be picked up at the Litchfield Police Dept., 2 Liberty Way, and the closing date is August 20, 2004. The Town of Litchfield is an Equal Opportunity Employer.

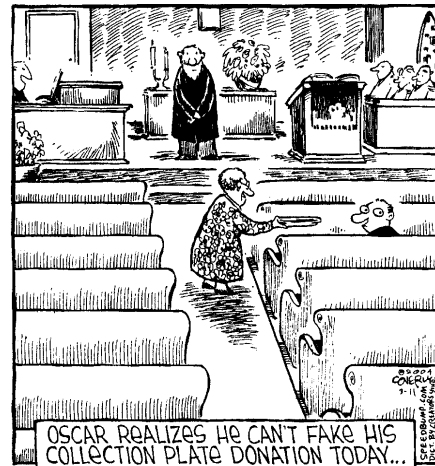
## PORTSMOUTH PD SEEKS FT OFFICERS

The Portsmouth Police Department is currently accepting applications for full-time police officer position(s). Candidates must pass a physical agility test, assessment center, psychological exam, polygraph exam and medical physical, as well as an extensive background investigation. The salary range is \$37,728.07 - \$48,290.84. Please send a cover letter and resume to Portsmouth Police Department, Personnel & Training, 3 Junkins Avenue, Portsmouth, NH 03801. If you have any questions, please contact Ms. Terry Barrett at (603) 427-1500 x 428, or [barrett@pd.cityofportsmouth.com](mailto:barrett@pd.cityofportsmouth.com). EOE,AA

## HELP WANTED IN GILFORD

The Gilford Police Dept. is now accepting resumes for the position of school resource officer/ patrol officer. This position will require the selected candidate to work in the elementary and middle schools when in session, and patrol during the summer. Resumes will only be accepted from individuals who are certified full-time police officers. Those who have experience dealing with juvenile matters, and/or are D.A.R.E. certified, are strongly encouraged to apply. The Town of Gilford offers a very competitive salary and benefit package. Those interested should submit their resumes to: Deputy Chief John Markland, c/o Gilford Police Dept., 47 Cherry Valley Road, Gilford, NH 03249. This position shall remain open until a qualified candidate is found. EOE

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